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September 8, 2011

VIA ELECTRONIC CASE FILING

The Honorable Leonard D. Wexler
Senior United States District Court Judge
U.S. District Court – EDNY
944 Federal Plaza
Central Islip, NY 11722

Re: De Ping Song, *et al.* v. 47 Old Country Road, Inc., *et al.*
Case No: 09-CV-5566 (LDW)(ETB)

Your Honor:

We are counsel for Defendants in the above-referenced matter and submit the following seeking permission to file a motion to recover all costs and damages, including attorneys' fees incurred in connection with our successful motion to vacate the Temporary Restraining Order and terminate the Order of Attachment in this case.

By Order of the Court dated August 30, 2011 [Document No.: 141], Your Honor granted Defendants' motion appearing at [Document No.: 92] effectively vacating the March 29, 2010 TRO and Order of attachment. This occurred after Plaintiffs' renewed their original TRO, brought in response to the potential sale of Defendants' salon. Hearings on the issue were convened and testimony was heard from two (2) individually named Plaintiffs as well as Defendants' Principals and employees between June 21 and June 23, 2011.

Since Defendants prevailed, they are entitled to recovery of costs, damages and attorneys' fees. Defendants' position is predicated upon Articles 62 and 63 of the C.P.L.R., specifically §§ 6212(e) and 6315; which provide a prevailing party (Defendants herein) with the right to recover damages associated with wrongful attachment and an improperly granted TRO respectively. Further, Defendants' position is bolstered by the express language contained within the hearing transcript at page 269 wherein Your Honor specifically contemplated the prospect of a fee application from the prevailing party upon the conclusion of the aforementioned hearings.



In light of the foregoing, Defendants respectfully request a pre-motion conference be convened as soon as practicable wherein a briefing schedule will be established for Defendants' contemplated motion.

We remain available should Your Honor require additional information in support of this application.

Respectfully submitted,

ZABELL & ASSOCIATES, PC


Saul D. Zabell

cc: Aaron Halegua, Esq. (*via* electronic case filing)
Clients (*via* first class mail)

